

1936

38179/14

CO 533/472
KENYA

38179/1

Kenya Uganda Railways & Harbours -

Seizure of Lighters on Lake Albert.

by Belgian authorities in respect of claim for loss of property.

Previous				
3029/33	R. 297	7/8	m: Roberts-Wing	1/1
	Mr. Parkin	1/8	Mr. Pami	13/4
	m: Roberts-Wing	13/8	m: Roberts-Wing	
	Mr. Pami	—	m: Floris	
Subsequent	297	9/9	298	21/4
	R 309 9/8	10/9	297	29/4
	m: Roberts-Wing	15/9	R-80	30/4
	m: Floris	16	297	
	Room 309	—		
297	23/1/36	297	24/9	
309	29/1	R 80	23/9	
Mr. Parkin	29/5	R 297	9/10	
m: Roberts-Wing	7/2	Room 309	13/10	
m: Roberts-Wing	18/5	Mr. Parkin	13	
Mr. Floris	11/9	303	16/10	
R. 297	23/6	R 299	24/10	
R. 309	24/6	C.D.	24/10	
Mr. Parkin	25/6	Room 299	22/10	
m: Roberts-Wing	26/6	R 297	29/10	
Mr. Pami	26	R 309	5/11	
Room 309	✓	Mr. Parkin	—	
297	27	297	2/11	
297	28	R. 309	3/11	
		Mr. Parkin	3	

2
K. A. Nys.
Lighthouse on L.H.

1 H. Co. Transport - No. 113 - 21-12-35 2

Reports that the Belgian Consul General has again re-visited the claims of Mons. Callebaut & others. Two copies of cover. requests that F.O. be asked to take steps to induce Mons. Callebaut to realize that the case cannot be revived.

The history of Mr. Callebaut's claim is given in the letter flagged on 17084/21.

It is possible that the Belgian Consul at Macao was not aware of all the circumstances which led up to the agreement between the U.K. and the Belgian Govt for the cancellation & withdrawal of all claims and counter claims arising out of the Callebaut affair.

? send copy of No 1 of each to Sr. reference No 28 on 3029/32, and request that representations may be made to the Belgian Govt as desired by the U.K. for Transport.

A. Fraser with
29.1.36.

highly confidential
investigation

Please see the attached note by Mr. Fraser
(Assistant Attorney General, Hong Kong) together
with a translation of the important note from
the

the Belgian Foreign Minister regarding the proposed settlement. Whatever that note meant, it is abundantly clear that the Belgian Government did not mean by it that M.Callebaut's claim could be regarded as disposed of.

It is true that the last paragraph stated that the Belgian Government "accepte donc en fait, en ce qui le concerne, la proposition contenue dans la lettre de Votre Excellence du 27 avril écoulé which might imply that they would not help M.Callebaut in any way to obtain satisfaction of his claim. It could hardly mean more than that, and, moreover, the paragraph must presumably be read in the light of the previous part of the note in which the Belgian Government seem to undertake nothing except to refrain from action which would be contrary to international law or comity, i.e. execution against British Crown property and support of claims for costs incurred in such execution previously levied. In return they expected waiver of the British claim for compensation. In other words, they ask for a substantial concession in return for something which they could not in any case decently withhold. It seems quite clear that there has been a misunderstanding, at least on our side. (I see that no legal advice was given on the settlement.)

How far, if at all, M.Callibaut's claim is reasonable, I cannot say, since we have never had sufficient details of it. It

has

3

has been all along agreed that his claim for costs in the proceedings should be repudiated. So far as interest is concerned, it seems that in any case the rate quoted is excessive, and that payment of anything in respect of the period up to the date upon which notice of the judgment was received by the K.U.R. is out of the question. I am far from saying that in other respects his demands should be met. For one thing, the mysterious item of 45,000 francs "damages and interest" tacked on to a loss of 1,051 shillings (about 8,000 francs at the time) seems ridiculous, but we have no knowledge of how this sum is made up.

The next step seems to be for the Foreign Office to explain the misunderstanding to Belgium, and if M.Callibaut is going to persist, I see no reason why we should not re-open our claim. We do not appear ever expressly to have accepted the settlement as set out in the Belgian note.

J. O. Roberts
7/2/36.

I now submit *apt. 6/10*
(I regret the delay in dealing with this and has been due partly to the Dept. being shut (handed))

J. J. Gamm
8/1

"en ce qui le concerne" might be taken as meaning "for its part" i.e. agrees to drop its claim if we drop ours as indeed we proposed we do the K.U.R. took it that way. But we must ask

W. B. Gamm
18-5 advised

*x similar called
"cost" see
end of 2/10
3027/53*

2 L.F.O. (sup. No. 1) ^{29/7} cons - 29 MAY 1936

3 F.O.C. 4003/4003/4 - 22.6.36
2 ansd; considers that M. Callebaut would not
be able to win his case against the K. U. R.
in the circumstances

? Fabricated to legal officers
in form the H. H. Transport and
supported by the F.O.

C. J. Fromm with
24/6/36.

It is all very well for the F.O. to
say that M. Callebaut was not to
be in a post to involve the aid of
the Belgian Govt. But the fact
remains that, since their understanding
not to assist him, M. Callebaut
has been receiving assistance from
the Belgian Consul Genl at Nairobi
(v. Encl. to No 1) in furtherance of
his claim. We can hardly tell
Kenya to ignore any further
communications wh. they may
receive from the Consul Genl; & if
the F.O. are not prepared to urge the
Belgian Govt. to instruct their
Consul Genl not to take any
further action, they shd. at least
tell us how Kenya shd. reply to

any further communication from the
Consul Genl.

> Put this point to F.O.

W. P. P. P.
26/6

I agree

It is moreover not clear that M.
Callebaut would be prevented from
obtaining satisfaction of his claim by
proceedings in the local courts by
"discouragement" on the part of the
Kenya & Uganda Govts, though it
might be thought that such
proceedings were taken it seems
that his claim would fail at least
to some extent.

W. P. P. P.
26/6

There is also the point that, if we do not
take up the question with the Belgian
Govt now, it will be difficult later on
to reopen the question of the claim
against them.

W. P. P. P.

Yes: we must ask F.O. as proposed

J. S. G. F. H. D.

26 June

4 to F.O. (2 ansd) 7/8 cons 7/7/36

Morphy has been received to Nov. ? continues
to wait.

Go to Kuyne 297 1/2
36.

5. F.O. C4944/4003/4. ----- 6.8.36.
4 and; transmits with comments draft of despatch
to the Ambassador at Brussels on the subject, and
enquires whether the G.O. agrees.

Dr.

J.P. Pasari
12/8

I presume the H.G. had authority to
raise the Shell Co's claim. We can
hardly raise the question now, but
the point gives food for thought in
considering the Belgians' ^{Govt's} ~~quite~~
understandable attitude that they
have no right to cancel the
claims of private citizens - I
presume this is the line they take.

J.P. Pasari
13/8.

6 So. G. O. (5 and) 2119. - 19 AUG 1936

7. F.O. C 5968/4003/4. ----- 8 9 36
Office to accompany their despatch
to Brussels with a private letter
explaining the view expressed in the G.O.
& asking whether the Gallebant can be
discharged from prosecuting his claim.

I do not think we can press this
further, but we shd. I think accept
the offer of the F.O. to ~~accompany~~ accompany
their official representatives by a G.O.
enquiring on the lines indicated.

J.P. Pasari
14/8

Very well, but I still think F.O. are
thinking. Our construction of the
compensation as set out in G is
undoubtedly correct.

J.P. Pasari
15/8

The despatch & G.O. letter will amount to
acquiescence in the position that we
have surrendered our substantial
claim in return for next to nothing,
but if you think we can do no
more, so be it.

J.P. Pasari

(The F.O. would run away from a big Pomeranian.)
all the same we can't force them to do more
and, after all, they are not ruling out the possibility
of reviving our claim if the Belgians prove difficult

as proposed

J.P. Pasari

16.9.

To E. W. Torr (7 lines) s/o - 21 SEP 1936
(FO)

9. F.O.C 6606/4003/A. ----- 8.10.36.
Ref.No.8; transmits copies of despatch and a/o letter
to H.M.Representative, Brussels, on lines agreed.

? How send copies of Nos 2 to 9
to H.M. Rep. Brussels, that info
for information -

(Affairs with
13.10.36

J.P. Gosselin
13/x
Gosselin

To H.C. Sept 102 ----- 22 OCT 1936

(Nos 2 to end, 3, 4, 5, 6, 7, 8 & 9)

1 Answer

DESTROYED UNDER STATUTE

11. Torr (F.O.) C 7400/4003/A. ----- 28.10.36.
Trs. copy of letter from Embassy at Brussels describing
conversation on the matter with Ministry of Foreign
Affairs, from which it appears that there is possibility
of amicable settlement; requests this may be verified
from Kenya in first place.

We might ask the Director of this
is foundation for the negotiation
of an amicable settlement.

Submit Draft

J.P. Gosselin
5/11/36

1/2 To E. W. Torr (11 lines) s/o -

(FO)

10 NOV 1936

13 To L.R. Treasurer (4 lines) s/o

11/11/36

DESTROYED UNDER STATUTE

14. F.O. (C.7770/4003/4) ----- 5.11.36.
Trs. copy of despatch, and enclosure, No.578 of 23.10.36
received from H.M. Representative, Brussels on the subject
of claim of M.Callebaut.

144A

? Copy to H.M. Rep. Brussels Ref. 10.11

(I have drafted a very rough
translation of the instructions sent
by the Belgian Govt to the
Belgian Consul General at Nairobi
(1933).

J.P. Gosselin
31.12.36

m: Roberts. wry.

You will be interested to see this.
I have it in French, which to be
sent but to proceed on prepared
J.P. Gosselin
31/12

interested, you. But the more I see of the
case the more I regret I regard it.
We have been worried by the Belgian F.O.
and let down by our own. The
original demand of this man Callebaut
seems to be palpably exorbitant, and what
is more, although I have never understood
the significance of the various items,
it seems to me that they arise at least to
some extent out of the previous
litigation, and that the Belgian Consul
General in Nairobi has therefore
departed from the instructions given to him.
However, we can't expect to get any
help from our own F.O., and I think

The best thing Kenya can do is to
examine the claim & if they are
satisfied that it can't succeed in
the local courts, reply to the Consul
General with a flat denial
of liability & say that if this man
thinks he has a right of action there he
had better pursue it.

Robert Wray
1/1/37

15. L. B. Preston (20.) ————— 9th Dec. '36.

(States that there is no foundation in
the report that there was some question
of an amicable settlement of D. Callabanti's
claim).

I regret the delay in dealing
with this file.

I am submitg. for comment
after spg. to Mr. Roberts-Wray.

J. R. Ramin
12/4

16 To Preston (15 ansd)
" " (Wfencell as per dft) } 21.4.37

17 To Jarr (15/c 16) (11 ansd)

R. J. 11

111

C. O.

- Mr. Pasiu 13/4
- Mr. Roberts-Wray 14/4
- Mr. Flood 14/4
- Sir C. Parkinson.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Stuchburgh.
- Permi. U.S. of S.
- Party. U.S. of S.
- Secretary of State.

20

Dear Tom,

21. 11. 37

With ref. to your letter No C. 7400/4003/4 of the 28th of Oct, I find that I have omitted to let you know that we heard from Freestone, some little time ago, that he had been unable to trace any foundation for the suggestion that there was some of an amicable settlement of the claims of R. Callahan against the Kenya Transport Administration.

(11)

DRAFT.

C. J. W. Tom Esq.
(F.O.)

To Freestone (S.S.)

FURTHER ACTION.

38179/17/36.

7

C. O.

- Mr. Pascoe 13/4
- Mr. Roberts-Wray 14/4
- Mr. Flood 14/4
- Sir C. Parkinson.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Smuckburgh.
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

20

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21. 11. 37

With ref. to your letter No C. 7400/4003/4 of the 28th of Oct, I find that I have omitted to let you know that we had from Freester, some little time ago, that he has been unable to trace any funds for the suggestion that there was some of an amicable settlement of the claim of R. Callahan against the Uganda Transport Administration.

(11)

DRAFT.

C. J. W. Torr Esq
(Po.)

To Freester (P.O.)

FURTHER ACTION.

38179/17/36

C. O.

- Mr. Passin 13/4
- Mr. Roberts-Wray 14/4
- Mr. Flood 15.4/4
- Sir C. Parkinson.
- Sir G. Tompkinson.
- Sir C. Bottomley
- Sir J. Shuckburgh
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

for Mr. Flood's sig.

21.4.37

Dear Weston.

With ref. to your letter
 No. T/C1/A.1 of the 9th of
 Dec., we have been
 considering what wd. be
 the best line for the
 Transport Administration to
 take. [In the event of
 the Belgian Council Panel
 returning to the charge
 in support of the claim
 of D. Callb...]

In this connection
 I enclose a copy of
 a note dated the 23rd of
 Oct. from the Belgian
 Govt. ~~at Brussels~~
 together with a rough
 translation of the
 more important part of

now enclose a copy of a letter
 wh. I have sent to Weston
 as to what seems to be
 the best line for the Administration
 to take in regard to this claim.

Yours sincerely

J. E. W. FLOOD

DRAFT.

? [J. In the C.G. awaiting
 a reply to his last
 letter 20/11/36]

Brussels 23/4/36
 (Sub. anal. to No 14)
 Translation of Belgian
 (14 a)
 (with foot-note)

FURTHER ACTION.

Copy to F.O. with
 5/2.

The instructions sent from Brussels
to the Belgian Council General in
November in 1933. There is a footnote
by Roberts-Wray as to the meaning
of the word "litige".

This note bears out what
was said in Baxter's letter of the
16th of Oct. (see my letter of the 12th of Nov.)
as to the interpretation wh. has
all along been placed by the
Belgian Govt. on ~~the~~ what we
had understood to be an
arrangement for the ~~mutual~~
reciprocal waiving of all their
claims & counter claims.

You will have seen from
the earlier correspondence that the
P.O. is not disposed to take the
line that our acceptance of
that arrangement was due to
a "misunderstanding" of what
the Belgian Govt. had in fact agreed
to do. It is now quite clear
that the Belgian Govt. has no
power to prevent R. Callébat

(encl. G
No. 11)
(No. 13)

presenting his claim in the Kenya Courts, while we on the other hand have agreed to waive our counter

claims. (See however the last para of my letter to the F.O. of the 11th September, 1936)

On the information on our files, it is extremely difficult to understand the significance of the various items in this claim but they seem, at any rate to a large some extent, to ~~be~~ ~~of the~~ ~~same~~ ~~nature~~ ~~as~~ ~~the~~ ~~items~~ ~~in~~ ~~the~~ ~~previous~~ ~~diligence~~, ~~and~~ ~~that~~ ~~it~~ ~~is~~ ~~not~~ ~~to~~ ~~be~~ ~~sustainable~~ ~~in~~ ~~the~~ ~~Kenya~~ ~~Courts~~.

We accordingly suggest that the best thing for the Transport Administration to do is to examine the claim thoroughly, ^{(in so far as} ~~if~~ they are satisfied that it can't succeed in the local Courts, to ^{reply to the Council for?} ^{(if it is thought fit} ~~to~~ ~~reply~~ ~~to~~ ~~the~~ ~~Council~~ ~~for?~~ ~~to~~ ~~go~~ ~~on~~ ~~with~~ ~~the~~ ~~com^{ms})~~ ~~return~~ ~~to~~ ~~the~~ ~~changes~~ with a flat denial of liability & say that if Callabant thinks he has a right of action, then he had better pursue it.

? () See above
J.S.S.

if ~~the other hand~~ it
shd. appear that he ~~was~~ wd. be
likely to succeed on any
items of his claim, if he
took the matter to the Courts,
then we think that the best
course wd. be ^{make an} ^{without prejudice}
to offer ^{to}
settle those items, ~~but without~~

Yours

Yours sincerely

(Signed) J. E. W. FLOOD

object the recovery of the legal costs which he has incurred in connection with the seizure of a barge belonging to the said company.

The agreement does not prevent the Belgian Government from supporting the claim which M. Callebaut formulated originally against the company, provided that the claim is introduced in the prescribed manner by international law. In this respect M. Callebaut should be warned that he cannot, in order to gain his cause, rely on the judgments given in his case by the Belgian Court, that Court not being competent in the matter, since it has been admitted that the K.U.R. and H. is a British state concern. He should proceed against that organization through the proper channel according to the law of Kenya and Uganda, or by extrajudicial procedure, that is to say, by diplomatic channel.

M. Callebaut should, moreover, be warned that he cannot receive the assistance of the Belgian authorities for the execution either of the judgment given previously in his case or in any judgments which he might seek in future in our tribunals.

Practically, the situation is as follows:-

Either Callebaut can proceed against the K.U.R. and H. in the Kenya or Uganda Courts in respect of the claim which he originally introduced in the Belgian Court;

Or he can request you to act as an intermediary between him and the Society for the purpose of settling the original litigation^X, and you may assist him, but solely in respect of that litigation^Y

^XI think "litige" here means cause of action - a distinction with a very important difference.

E 14 a 12
30
Rough translation.

Extract from the instructions sent by the Belgian Government to the Belgian Consul-General at Nairobi in 1933.

(1) The points on which the Belgian Government has agreed with the British Government or on which it has given its undertaking are exclusively:-

(i) The Belgian authorities will not lend their assistance in any way to those who wish to distrain on goods or chattels the property of the British Government, as a result of judicial decisions which would have been given in their favour.

(ii) The Belgian Government will not accord its support to claims, particularly those of M. Callabaut, having as their object the recovery of the costs of execution on any property belonging to the Crown.

(iii) The British Government renounces to claim against Belgium an indemnity for the seizure of the barge and it undertakes not to support the claims that may be formulated in this respect by any third party.

Therefore the Belgian Government takes no part with regard to the litigation involved between M. Callabaut and the "K.U.R. and H.". It has left intact - in fact it would not be competent to affect - the rights of M. Callabaut vis-a-vis the railway company in question. It has undertaken simply not to support to the British Government the claim of a Belgian subject having as its object the recovery of the legal costs which he has incurred in connection with the

seizure of a barge belonging to the said company.

The agreement does not prevent the Belgian Government from supporting the claim which M. Callabaut formulated originally against the company, provided that the claim is introduced in the prescribed manner by international law. In this respect M. Callabaut should be warned that he cannot, in order to gain his cause, rely on the judgments given in his case by the Belgian Court, that Court not being competent in the matter, since it has been admitted that the K.U.R. and H. is a British state concern. He should proceed against that organization through the proper channel according to the law of Kenya and Uganda, or by extrajudicial procedure, that is to say, by diplomatic channel.

M. Callabaut should, moreover, be warned that he cannot receive the assistance of the Belgian authorities for the execution either of the judgment given previously in his case or in any judgments which he might seek in future in our tribunals.

Practically, the situation is as follows:-

Either Callabaut can proceed against the K.U.R. and H. in the Kenya or Uganda Courts in respect of the claim which he originally introduced in the Belgian Court;

Or he can request you to act as an intermediary between him and the Society for the purpose of settling the original litigation, and you may assist him, but solely in respect of that litigation.

7

X... Y... Ltd
see also

In any further communication on this subject, please quote
No. *C 7770/4003/4*
and address—not to any persons by name but to
"The Under-Secretary of State," Foreign Office, London, S.W. 1.

14
14

THE Under-Secretary of State for Foreign Affairs presents his
compliments to the Under Secretary of State for the
Colonies and, by direction of the Secretary of State,
transmits herewith copies of the under-mentioned paper.

Foreign Office,
6th Nov. , 1936.

RECEIVED
17 NOV 1936
O. O. REG.

Reference to previous correspondence:

70. letter C 6606/4003/4 of 8th Oct.

Description of Enclosure.

Name and Date.	Subject.
<i>M. Representative Brussels No 578. 28th Oct.</i>	<i>Claim of M. Gallibaut</i>

Similar letter sent to

Copy of suberel to Hunter

Brussels,

28th October, 1936. 15

No. 578.
(411/6/36)

Sir,

With reference to ^{u/c of 9} your despatch No. 497
(C 5608/4008/4) of October 2nd and to Mr. Barclay's
letter to Mr. ^{u/c of 11} Baxter of October 15th, I have the
honour to transmit to you herewith a copy of a note
from the Belgian Government repeating at length the
explanations which had been given verbally by M.
Louwers, head of the Colonial Section of the Ministry
of Foreign Affairs, to Mr. Barclay, regarding the
attitude of the Belgian Government to the claim of
M. Cillebaut against the administration of the Kenya
and Uganda Railways and Harbours.

I have the honour to be, with great truth and respect,

Sir,

Your most obedient, humble Servant,

Right Honourable
Anthony Eden, P.C.,
etc., etc., etc.

Bruxelles, le 25 octobre, 1936. 10

Monsieur l'Ambassadeur,

La note que Votre Excellence m'a fait l'honneur de me remettre le 9 octobre, sous le no. 195, relativement à la liquidation de certaines difficultés entre les autorités du Congo belge et l'Administration des Transports du Kenya et de l'Uganda, a retenu toute mon attention.

Copy to Brussels
 (15)
 Votre Excellence ne permette de Lui dire que la plainte qu'adresse le Gouvernement de Sa Majesté Britannique contre l'attitude du Consul Général de Belgique à Nairobi doit résulter d'une méprise.

Pour la dissiper, je crois ne pouvoir mieux faire que de reproduire ci-dessous les instructions que mon honorable prédécesseur avait données à Notre Consul Général à Nairobi, au mois de décembre dernier, quand celui-ci avait signalé au Gouvernement que M. Callebaut s'était adressé à lui pour faire valoir certaines revendications auprès de l'Administration des "Kenya and Uganda Railways and Harbours".

307 (22)
 "Après les pourparlers, disait M. van Zeeland dans ses instructions, qui se poursuivirent entre le Gouvernement belge et le Gouvernement britannique au sujet de la saisie, par les autorités belges, d'une barge appartenant à l'Etat britannique, et qui aboutirent à faire lever cette saisie, le Gouvernement britannique adressa le 27 avril 1935 au Gouvernement du Roi une note dont je vous prie de trouver sous ce pli ^{la} une copie. Mon honorable prédécesseur y répondit, le 10 juin 1935, par la lettre dont copie est également ci-jointe. C'est probablement à l'arrangement résultant de cet

Échange ...

à l'Excellence
 Sir Edmund Drey,
 Ambassadeur de Grande Bretagne.

échange de lettres qu'a fait allusion "la Direction des "Kenya and Uganda Railways and Harbours lorsque vous lui avez déferé la nouvelle réclamation de M. Henri Callebaut.

Mais si vous voulez bien vous référer aux documents en question, vous remarquerez qu'ils n'autorisent pas la fin de non recevoir générale que vous a opposée cette direction. Les points sur lesquels le Gouvernement belge a marqué son accord au Gouvernement britannique ou sur lesquels il a pris des engagements sont en effet, exclusivement les suivants:-

(1) les autorités belges n'ont à prêter d'aucune manière leur assistance à ceux qui voudraient poursuivre sur des biens qui sont la propriété de l'Etat britannique l'exécution des décisions judiciaires qui auraient éventuellement été prises en leur faveur.

(2) Le Gouvernement belge n'accordera pas son appui aux demandes, notamment de M. Callebaut, tendant à obtenir remboursement des frais de procédure de saisie des biens appartenant à la GOMERIE.

(3) Le Gouvernement britannique renonce à réclamer à la Belgique une indemnité du chef de la saisie de l'allége et il s'engage à ne pas appuyer les réclamations qui pourraient être formulées à cet égard par des tiers.

Ainsi le Gouvernement belge n'a nullement pris position sur le fond du litige qui s'est élevé entre M. Callebaut et les "K.U.R. and H."

Il a laissé intacts - il n'aurait d'ailleurs pu y toucher - les droits de M. Callebaut vis à vis de la Compagnie des Chemins de Fer en question. Il s'est simplement engagé à ne pas appuyer auprès du Gouvernement britannique la réclamation de notre ressortissant tendant à obtenir le remboursement des frais qu'il a été amené à engager pour faire saisir la barge qui appartenait à la dite compagnie.

L'accord intervenu n'empêche donc pas le Gouvernement belge d'appuyer la réclamation que Callebaut a formulée originairement contre cette compagnie, pourvu que cette réclamation soit introduite dans les formes prescrites par le droit international.

A cet égard, M. Callebaut devrait être prévenu qu'il ne peut pour obtenir gain de cause s'appuyer sur les sentences rendues dans son affaire par les juridictions belges, celles-ci n'étant pas compétentes, en l'espèce, puisqu'il a été admis que les "K.U.R. and H." sont une sorte de démembrement de l'Etat britannique. Il doit agir contre cet organisme soit d'après les règles admises, dans un cas de l'espèce, par la législation du Kenya et de l'Uganda, soit d'après une procédure extrajudiciaire, c'est à dire par la voie diplomatique.

M. Callebaut doit, de plus, être prévenu qu'il ne peut plus recevoir aucun concours des autorités belges pour l'exécution soit des sentences rendues antérieurement dans sa cause,

soit ...

4.

soit des sentences qu'il solliciterait encore de nos tribunaux.

Pratiquement la situation se présente comme suit :

Ou bien Callebaut peut introduire contre les "U.R. and H." l'action qu'il avait introduite originairement contre cet organisme devant les tribunaux de la colonie, mais cette fois, devant les juridictions compétentes du Kenya ou de l'Uganda.

Ou bien, il peut vous demander de lui servir d'intermédiaire entre lui et la Société en cause pour le règlement de ce litige originnaire et vous pouvez lui prêter votre concours, mais uniquement pour ce litige."

Je saisis cette occasion, Monsieur l'Ambassadeur, de renouveler à Votre Excellence les assurances de ma très haute considération.

F. VAN LANGENHOVE.

13²⁰

C. O.

- Mr. Grossmith. *5/11*
- Mr. *Parkin* *5/11/36*
- Mr.
- Sir C. Parkinson.
- Sir C. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Parnt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

S.O. for Mr. Flood's signature

DOWNING STREET.

10 November, 1936.

DRAFT.

L.B. FREESTON, ESQ., O.B.E.

~~You may remember the story of M. Callebaut's claim against the Transport Administration and the counter claims by the High Commissioner for Transport. In any case you will have seen from the correspondence accompanying the Secretary of State's Transport despatch No. 102 of the 22nd of October that we have been trying to get the Belgian Government to instruct their Consul-General at Nairobi to refrain from giving further assistance to Callebaut in the prosecution of his claim against the Transport Administration. I ~~now~~ enclose a copy of a further letter from the Foreign Office and a letter from the Embassy in Brussels in which it is ^{stated} ~~suggested~~ that~~

FURTHER ACTION.

28th October (11) / (10)
[Signature]

R. Downers has heard indirectly that

there is some question of an amicable
settlement. ~~Kindly~~ ^{Can you} let us know whether
there is any foundation for the suggestion?

(Signed) J. E. W. FLOOD

FOREIGN OFFICE, S.W.1.

28th October, 1936.

(C 7400/4003/4)

30 APR 1937
C. O. REGY

Dear Flood,

(8)
With reference to your letter No. 38179/17/36 of 21st September about Callebaut's claim against the Kenya and Uganda Railways and Harbours.

Our Embassy in Brussels approached the Belgian authorities about this claim, and I enclose a copy of a letter from Mr. Barclay, of the Embassy, to Mr. Baxter, of this department, describing a conversation he had with the head of the Colonial Section of the Belgian Ministry of Foreign Affairs.

You will see that the Belgian authorities put an even narrower interpretation than we do on the 1933 agreement though, in practice, the Belgian Consul in Nairobi would seem to have met our point by telling M. Callebaut that his only remedy was in the courts.

You will further observe however, that Barclay was told...

J.E.W. Flood, Esq., C.M.G.

Handwritten notes:
12
copy to L.S. Treasurer (13)
17
and

22

told that "there was some question of an amicable
"settlement." Perhaps you would like to get verification
of this point from Kenya before deciding whether any
further action is required.

J. W. ...

P. I. L. ...

Copy

(C 7400/4003/4)

British Embassy,
Brussels.

October 16, 1936.

Dear Baxter,

am 91
Your letter C.6606/4003/4 of October 2nd about the claim of M. Cillebaut against the Administration of the Kenya and Uganda Railways and Harbours.

In Charles's absence I went round to see M. Louwers, the head of the Colonial Section of the Ministry of Foreign Affairs, to discuss the matter. He had before him the note which we addressed to the Belgian Government on the strength of your despatch No. 497 (C 6606/4003/4) of October 2nd, and he began by saying that he feared there had been some misunderstanding regarding the interpretation of the Belgian Note of June 10th, 1935. The Belgian offer should have been taken absolutely literally, and he then proceeded to read to me the instructions which had been sent to the Belgian Consul-General at Nairobi in the summer of 1935, giving the Belgian interpretation of that agreement. This is more or less faithfully reflected in the Consul-General's Note to the Kenya Uganda Railway Administration of November 26th, 1935 (enclosed in your above-mentioned despatch). According to him, therefore, the Belgian Government had only agreed (1) to give no assistance to any attempt which might be made by M. Cillebaut to enforce the decisions given in his favour in

the...

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3029/33
in 11
C.W. Baxter, Esq., M.C.,
Foreign Office.

the Congo Courts, and (ii) to give no support to his efforts to obtain repayment of the legal costs for which he was responsible after seizure, in pursuance of the verdict given in his favour, of the lighter belonging to the Colonial Administration. There had never been any question of the Belgian Government dissuading M. Callebaut from proceeding with his claim through the appropriate channels and indeed they would never have considered the possibility of undertaking to withdraw their diplomatic support from a Belgian subject who appeared to have a just grievance. The Note of June 10th, 1933, had contained no mention of the Belgian Government agreeing to abandon the substance of the original claim and the Consul-General had, in accordance with instructions sent to him from the Ministry of Foreign Affairs, consequently advised M. Callebaut that he should take the matter up in the Kenya courts which alone appeared to be competent. M. Louwers added, however, that he had heard indirectly that there was some question of an amicable settlement.

In view of the position adopted by M. Louwers, which indeed appeared to be absolutely in accordance with the letter of the Belgian Note of June 10th, 1933, it did not seem to be much use my suggesting that they should fulfil the spirit of the agreement by endeavouring to dissuade M. Callebaut from prosecuting his claim. Any such suggestion would in any case have met with a flat refusal. I accordingly contented myself...

myself with saying that I would report what he had said to you, but that this was not the interpretation which the United Kingdom authorities had put upon the 1933 Agreement and that they might not be able to accept it.

Yours sincerely,

(Signed) R.E. Barclay.

FOREIGN OFFICE, S. I.

2nd October, 1936.

(L 6606/4003/4).

Dear Sir,

My despatch No. 497 of October 2nd about the claim of E. Callebaut against the Administration of the Kenya and Uganda Railways and Harbours.

The Colonial Office are of the opinion that the waiver of claims on the part of His Majesty's Government in 1935 was conditional on the satisfaction of the Belgian claims, and that if the Belgian Government, by not compelling E. Callebaut to drop his claim, fail to fulfil their part of the agreement, it will be open to His Majesty's Government to revive the British counter claims.

We very much doubt whether it would be advisable to use this argument when an approach is made to the Belgian Government on the lines of our

despatch/

Sir Noel Charles, Bart., M.C.

despatch under reference. We should, however, be glad if an opportunity might be taken to enquire semi-officially of the Belgian authorities whether they can see their way to implement the agreement of 1935 in the spirit as well as in the letter by attempting to dissuade M. Callebaut from prosecuting his claim.

C. O.

38179/17/36

21 September 1936

Mr. Evans 17.9.
 Mr. Parkin "
 Mr. Roberts-Wray 17.9.
 Mr. Flood 18/9
 Sir C. Parkinson.
 Sir G. Tomkinson.
 Sir C. Bottomley.
 Sir J. Shuckburgh.
 Permt. U.S. of S.
 Parly. U.S. of S.
 Secretary of State.

C.O.
 18 SEP
 1936

53

For Mr Flood's signature

21 SEP 1936

DRAFT. conr.

C. I. W. Tow Esq.
 Foreign Office.

(7)

copy 2 to cr. (10)

Dear Tow.

Thank you for your letter No C/5968/4003/4 of the 8th of September about Callebaut's claim.

It is a little disappointing that you don't feel able to go further, as we still feel that our construction of the earlier correspondence is the correct one. But we accept your suggestion that the official representations should be accompanied by a semi-official enquiry

- that the ^{waiver} of claim on our part was conditional and

FURTHER ACTION.

and that the condition has not been accepted.

on the lines you indicate.

Presumably you are not
ruling out altogether the
possibility of reviving our
claim if the Belgians
prove difficult.

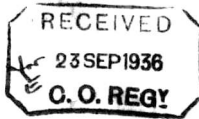
Yours sincerely.

(Signed) J. K. W. FLOOD

431
FOREIGN OFFICE, S.W.I.

8th September, 1936.

(C 5968/4003/4)



Dear Flood,

6. Your official letter No.38179/17/36 of August 19th.

We have given further consideration to the possible feasibility of informing the Belgian Government that if M. Callebaut's claim is not dropped, ours shall be revived. Frankly, however, we still feel that the position is as stated in our letters C 4003/4003/4 of June 22nd ^{has 3-5} and C 4944/4003/4 of August 6th; and we do not think we should be justified in adding anything to the draft despatch enclosed with the latter letter.

We could, however, if you like, accompany our despatch to Brussels with a private letter explaining how you feel about it and asking the Embassy to enquire of the Belgian Foreign Ministry whether they can see any way to implement the agreement of 1933 in the spirit as well as in the letter by dissuading M. Callebaut from

prosecuting

*Hand (8)
copy to H. C. (10)*
J.E.W. Flood, Esq., C.M.G.

prosecuting his claim. Our feeling is that the Belgian
reply will be that they undertook not to assist
M. Callebaut and that they will instruct their Consul
to refrain, in future, from doing so, but that they
cannot control M. Callebaut himself. However, we will
try it on if you like.

Journe

C. W. Jave

38179/17/36.

6³²

C. O.

Mr. Parnin 12/8
Mr. Robert-Wray 13/8.
Mr. Parnin 13.8 f.

Sir C. Parkinson.
Sir G. Tomlinson.
Sir C. Bottomley.
Sir J. Shuckburgh.
Perm. U.S. of S.
Parly. U.S. of S.
Secretary of State.

C.O.
13 AUG
184

19 AUG 1936

Ans'd 7

Sir,
I am sorry to ask the receipt
of your letter No. C.4944/4003/4
of the 6th of Aug. regarding
the claim of R. Callebaut
against the administration of
the Kenya & Uganda Railways
& Harbours and to request
you to inform the Sec. of S.
that, if it is not open to
H.M.S. to waive the British
counter claims against the
Belgian authorities, Mr.
Owenly. You have no chance
to offer on the terms of the
dft. rep. to H.P. Ambassador
at Brussels.

DRAFT.

The M.S. of S.
30.

[Handwritten signature]

(10) 2 H. 4

FURTHER ACTION.

I am, however,
to observe that the offer to
waive the claims of the Railways
& Harbours Administration
of the Shell Co. of E. Africa
was [] conditional

This was made quite clear in the Flood & Lamville note of the 27th of April, 1933 to the Belgian Minister for Foreign Affairs.

(20 on 3049/33)

on the cancellation of R. Callebaut's claims, and the ~~substantive~~ ^{rights deleted} on the 10th of June, 1933, from the Belgian Division for Foreign Affairs was understood at the time, not only by the Dept but also by L^d Flamville, to constitute an agreement to cancel mutually all claims & counter-claims arising out of this case.

I am to invite reference to the terms of L^d Flamville's resp. No 288 of the 13th of June 1933. It was on this understanding that, as the FO. was informed, in the letter from the Dept. of the 3rd of Oct. 1933, the Note for Transport contained that "the agreement to cancel all claims and counter-claims has been put on record sufficiently clearly."

(- do -)

(26 on - do -)

In these circumstances it is not understood why it is not ~~was regarded~~ as practicable what are the objections to the Belgian Govt being informed of the misunderstanding wh. has arisen, & that Mr. G. reserve the right to reserve the go. of the counter-claims against the Belgian Govt. Mr. Donnelly's Govt wd. be glad if further comm. c. be given to this aspect of the matter.

(Immed) J. E. W. FLOOD

In any further communication
on this subject please quote

No. C 4944/4003/4

and address—

not to any person by name

to—

The Under-Secretary of State,
Foreign Office,
London, S.W.1.

DUP.

34
5

RECEIVED
-7 AUG 1936
O. REGY

FOREIGN OFFICE.

S.W.1.

6th August, 1936.

Sir,

(4) With reference to your letter No.38179/17/36 of the 7th July regarding the claim of M.Callebaut against the administration of the Kenya and Uganda Railways and Harbours, I am directed by Mr.Secretary Eden to transmit to you herewith, for the consideration of the Secretary of State for the Colonies, the draft of a despatch which he proposes to address to His Majesty's Ambassador at Brussels instructing him to invite the Belgian authorities to restrain the Belgian Consul-General at Nairpbi from giving further assistance to M.Callebaut in the prosecution of his claim.

2. As you will be aware from the terms of the letter from this department No.C 4003/4003/4 of the 22nd June, the Belgian authorities did not, in Mr.Eden's view, undertake in their Note of the 10th June, 1933, to do more than refrain from assisting M.Callebaut to obtain satisfaction of his claim; and in return for this undertaking His Majesty's Government agreed to waive the claims of the Kenya-Uganda Railway Administration and the Shell Company of East Africa against the Belgian Congo authorities. While, therefore, for the reasons stated in the second paragraph of the Foreign Office letter of the 22nd June, Mr.Eden considers it improbable that M.Callebaut will be successful in enforcing his claims in the British Courts, should he nevertheless succeed in

The Under-Secretary of State,
Colonial Office.

Answer (6)

(2)

no 20

3029/33

copy to H.C. (10)

(3)

in doing so, Mr. Eden is inclined to doubt whether it will in fact be open to the High Commissioner for Transport, Kenya and Uganda, to revive the British counter claims against the Belgian authorities, as the final paragraph of your letter appears to suggest.

3. Mr. Eden would be glad to learn whether Mr. Secretary Ormsby-Gore concurs in the terms of the draft despatch to Sir Esmond Ovey.

I am,

Sir,

Your obedient servant,

C. W. Buxton

August

6.

Sir,

Sir Esmond Ovey,
Brussels.

With reference to Sir John Simon's despatch

No.464 of the 9th October, 1933, respecting

certain claims against the Administration of the

Kenya and Uganda Railways and Harbours, I trans-

mit to Your Excellency herewith copies of

correspondence exchanged with the Colonial Office

2. The action taken by the Belgian Consul-

General at Nairobi, in requesting the General

Manager of the Kenya-Uganda Transport

Administration to give consideration to M.

Callebaut's claim, would appear to be contrary

to the assurances conveyed to His Majesty's

Government in the Note from the Belgian Minister

for Foreign Affairs of the 10th June 1933, to

the effect that the Belgian Government would

refrain from assisting M.Callebaut to obtain

satisfaction of his claim. I shall accordingly

be

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m 20
3029/30

be glad if you will bring this to the attention
of the Belgian Government and request them to
instruct their Consul-General to refrain from
giving further assistance to M.Callebaut in the
prosecution of his claim.

C. O.

Mr. Grossmith. 30. 6. 36.

38179/17/36.

Mr. Parkin 3/7 P.

Mr. Roberts-Wray 2-7

Sir C. Parkinson.

Downing Street.

Sir G. Tomlinson

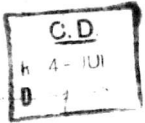
Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.



July, 1936.

Sir,

DRAFT.

THE UNDER SECRETARY OF STATE.
FOREIGN OFFICE.

I am etc. to acknowledge
the receipt of your letter of the
22nd of June, No. C.4003/4003/4,
regarding the claim of M. Callebaut
against the Administration of the
Kenya and Uganda Railways and
Harbours, and to observe that
since the date of the undertaking
of the Belgian Government not to
assist M. Callebaut in pressing his
claim, ~~M. Callebaut~~ ^{the latter} has been
receiving assistance ~~in that respect~~
from the Belgian Consul-General
at Nairobi in connection with
his claim.
2. ~~Mr. Ormsby Gore~~ would have
~~decided that the Belgian Government~~

copy 2 to Mr. (10)

FURTHER ACTION.

P.T.O.

should

the Belgian Govt

should be asked to instruct the
Consul-General to refrain from any
further action, *in the matter, Mr. Ormsby Gore*

opinion, *it* such a course would be
undesirable *It would be glad to learn
from you what reply*

Mr. Eden would suggest should be
returned by the Kenya Government to
any further representations *wh. may be made by,*
from the
Belgian Consul-General.

I am, etc.

With regard to the possibility that Mr. Callibant
may seek to enforce his claim in the ^{British} Courts
of Kenya ~~and Uganda~~, which it appears
probable that he would meet with at the
most partial success, it is not clear that
discouragement of the prosecution of his
suit would be effective. I am
moreover, to advise that if the claim
should eventually have to be met, *the High Commissioner would not
court wish to*
~~would seem to be difficult to refuse the~~

Handwritten note

question of the counterclaims against
the Belgian Government, *at a later stage*
if the misunderstanding which has come
to light is not now brought to their notice

*but it would seem
doubtful whether
this could be done.*

M. J. H. Flood

DUP.

29

In any further communication on this subject, please quote -

No. C 4003/4003/4

and address -

not to any person by name

but to -

"The Under-Secretary of State,"
Foreign Office,
London, S.W.1

FOREIGN OFFICE.

S.W.1.

22nd June, 1936.

Sir,

(2)

With reference to Colonial Office letter No.38179/17/36 of 29th May, regarding the claim of M.Callebaut, against the Administration of the Kenya and Uganda Railways and Harbours, I am directed by Mr.Secretary Eden to inform you that he feels compelled to agree with the contention advanced that the Belgian Government did not undertake in their Note of June 10th,1933, more than to refrain from assisting M.Callebaut to obtain satisfaction of his claim, and that they very probably are in fact not in a position to prevent him from presenting his claim as a private person by such means as are open to him. In these circumstances it would seem questionable how far it would be useful to approach the Belgian Government in the sense suggested in the last paragraph of your letter under reference.

2. In Mr.Eden's view, the undertaking of the Belgian Government not to assist M.Callebaut in pressing his claim should, however, be sufficient to prevent him from obtaining satisfaction of it, for it would seem to be open to the authorities of Kenya and Uganda to refuse to execute the judgment given by the Belgian Congo Tribunal at Buta on the 6th November, 1929, or alternatively, if M.Callebaut attempts to bring a new case in a Kenya or Uganda court, to discourage him as far as possible in the prosecution of his suit, basing their action in either alternative on the understanding reached with the Belgian Government in 1933. M.Callebaut would in
neither

The Under-Secretary of State,
Colonial Office.

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3029/18

copy to B. 24 (10)

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neither case be in a position to invoke the aid of the Belgian Government on the ground of a denial of justice, seeing that the Belgian Government have already undertaken not to assist him.

3. If Mr. Secretary Ormsby Gore agrees with this view, it is suggested that the High Commissioner for Transport, Kenya and Uganda, should be instructed accordingly.

I am,

Sir,

Your obedient Servant,

R. P. Wignar

38179/17/36.

41 me
27

C. O.

- Mr. Paskin 2/3
- Mr. Roberts Wray 18/5
- Mr. Flood. 21/6
- Sir C. Parkinson
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shackburgh.
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

Ann 3
~~5/5~~

Downing Street.

29 May, 1936.

Sir,

With ref. to F.O. letter

No. W. 11230/1669/4 of the 10th of
October, 1933, I am etc., to transmit
to you, for the consideration of

Mr. Secretary Eden the accompanying copy

of a further despatch which has been
received from the High Commissioner for
Transport, Kenya and Uganda, in regard
to the claim of M. Callebaut against

the Transport Administration of the Kenya &
Uganda Railway & Harbours.

On reconsideration of the
note
terms of the letter of the 10th of June
1933 from the Belgian Minister for
Foreign Affairs (which formed the
sub-enclosure to F.O. letter

DRAFT.

(No. 28 on
3029/33)

THE UNDER SECRETARY OF STATE.
FOREIGN OFFICE.

H. Cf. No. 118 of 21/12.

(No. 1)

copy info encl. to H. Cf. (10)

(No. 20 on
3029/33)

FURTHER ACTION.

No.

No. 7141/1669/4 of the 22nd of June

(No. 20 on
3029/33)

1935) it appears to Mr. Thomas to be open

to doubt whether that letter constituted

an agreement to cancel mutually all

claims and counter-claims arising

out of this case.

It appears in fact that, as

stated in the letter of the 26th of

November 1935 from the Belgian Consul

General at Nairobi, the Belgian

Government did not undertake more

than to refrain from assisting

M. Callebaut in any way to obtain

satisfaction of his claim, and in

particular to refrain from execution

against British Crown property and

from support of claims for costs

incurred in such execution previously

levied. But it does not appear that

they were in a position to agree to

prevent M. Callebaut from prosecuting

his claim, as a private person, by

such means as were open to him.

In

G. O.

Mr.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

In other words, ^{an offer} to return for
the waiving by His Majesty's Government
of a claim by the Administration of
the Kenya and Uganda Railways for
compensation against the authorities of
the Belgian Congo, the Belgian Government
appears to have offered to undertake
little more than to refrain from action
which would in any case, be contrary to
international law or comity.

If Mr. Eden concurs in this
view, it is suggested that it should be
explained to the Belgian Government that
the letter of the 10th of June 1935 from
the Belgian Minister for Foreign Affairs
had been understood to constitute an
agreement that M. Callebaut's claim should
be waived, as part of the reciprocal
liquidation of all claims and counter-
claims which had been suggested by His
Majesty's Government in Lord Glanvilles

letter

FURTHER ACTION.

^{now} letter of the 27th April 1933; that it

(23. on
3023/33)

now appears, from the ~~letter~~ of the

26th November 1935 from the Belgian

Consul General at Nairobi, that this

interpretation of the ^{with} letter of the

10th of June 1933 was incorrect, and

that M. Callebaut ^{are} is apparently still to

and ^{and} ~~his~~ Mohamed Tajadine

be regarded as free to prosecute ^{them} his

claim against the K.U.R.; if this is

in fact the case, then the condition

on which His Majesty's Government were

prepared to waive the claims of the K.U.R.

Administration and the Shell Company of

East Africa against the authorities of

the Belgian Congo has not been fulfilled;

^{Kingdom} and, unless the Belgian Government is

able and willing to take some action

to induce M. Callebaut ^{them} not to pursue ~~his~~

and ^{and} ~~his~~ Mohamed Tajadine

claim, His Majesty's Government will

feel obliged to reopen the question of

the claims of the K.U.R. and the Shell

Company of East Africa.

I am etc.,

[in 17084/31]

(18) Admin 43

The facts are sufficiently set out in Ministerial despatch of 17.2.31, No. 89 (189/3/31) to the Belgian minister for foreign affairs.

(23) in 3029/33

The British proposal is contained in the despatch No 102 of 27.4.31.

(20) in 3029/33
IA

The Belgian reply is contained in the despatch of 10.6.31 of which I attach a translation.

The position seems to be: that the British Govt. asked that private claims against the K.U.R. be set off against a claim by the Belgian colonies authorities; but the Belgian Govt. denies the liability of the Belgian colonial authorities, promised not to interfere with the property of the British Govt., and asked the British Govt. would waive its claim, and promised to remove future difficulties of the same kind.

and not to support claim of Callebaut & Tefelin to recover costs of execution on Crown property.

?
E.A.H.

In the circumstances, a well-remembered

to the Belgian Govt. should be sufficient.

It is probable that the Belgian Government do not appreciate that the British Govt. considers Callebaut's claim ill-founded, not, because the railway is Crown property, as because ~~reasons~~ of the question of notice and jurisdiction.

There appears to be no other solution except time, which is remaining against all parties.

The K.U.R. should avoid anything that will be construed as submitting to the jurisdiction of a court.

Translat in 9
20 in 3029/33

Brussels, the 20th June, 1933
IA

M. l'ambassadeur.

The letter with which Y.E. has honoured me, dated the 27th April, 1933, No. 102 (169/5/33), on the subject of (certain) difficulties in which the Belgian Congo authorities and the K.U.R. Administration are involved, has received the careful consideration of H.M.'s Government.

It appears from inquiries instituted by the Minister for the Colonies that the Colonial Govt. has no knowledge either of the new claim made by M. Callebaut against the K.U.R. Administration for legal costs incurred by him, or of the judgment referred to in Y.E.'s letter of the 17th April 1933, No. 169/6/33, purporting to have been given by a Court in the Colony.

With respect to the matter of his heretofore Tajadin, the Colonial Government has had no further information since the judgment given in the action in 1932, dismissing the same.

However, the Minister for the Colonies has reminded the Governor General of the Congo by telegraph that the Colonial authorities must render no assistance whatever to persons seeking to obtain execution of a judicial decision which may have been given in their favour, on any property of the British Government.

The Belgian Government, moreover, will not uphold the claims of Messrs. Callebaut and M. Mohamed Tajadin having as their object the recovery of the costs of execution on any property belonging to the Crown.

The Belgian Government consequently expects that the British Government will in return waive any claim against Belgium for com. ? assumes

penetration for the seizure of the lighter, and will give no support either to this claim or to any claim which might (in future) be made in this respect.

I think it is my duty, moreover, to advise (the fact) that in the opinion of the Belgian Government, no liability in this matter attaches to the Colony.

If by chance the British Government should encounter new difficulties similar to those which gave rise to the matter now in question, it is desirable that the Belgian Government be informed at the earliest possible moment in order that it may immediately take the necessary measures to remove these.

The Belgian Government therefore agrees in effect to the proposal contained in Y. E.'s letter of the 27th April last, in so far as the Government is concerned.

H. Mans.

38179/17

Precis 9 38179/17

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Enclosure

(1) Despatch of 21.1.33 from High Com^r for Transport Kenya to S. G. S.

referring to 24 and 29/3029/33, stating that Callbaut had renewed his claim, ~~was~~ asking S. G. S. to intervene, and enclosing copies of

(a) Letter of 25.8.33 from Belgian C. G. Nairobi to K. U. R.

referring to a judgment of 6.11.29 by the Tribunal of 1st Instance, Bata (Belgian Congo) ^{for Callbaut} against the K. U. R., of which frs. 45,000 damages remains unsatisfied.

referring also to the seizure and release of a "barge".

stating that on a telegram of 21.1.33 and subsequent letter from the K. U. R. to Staff, his legal adviser, Callbaut had told his hands, but hearing nothing further, now the stated proceedings to recover the balance of the judgment amounting to 31,500, with interest and costs to frs. 68,000.

(b) K. U. R.'s reply of 20.8.33 to Belgian C. G.

asking him, as the ~~only~~ British and Belgian Governments had agreed to cancel all claims and counter claims to prevent further proceedings by Callbaut.

(c) Belgian C. G.'s reply, in French, of 26.11.33 to K. U. R.

stating that the only points agreed on by the British and Belgian Governments were:

"(1) The Belgian authorities would render no assistance to any person acting in pursuance of a judicial decision which might have been given in his favour, to obtain execution on any property of the British Government:

(2) The Belgian Government would not support the claim of M. Callbaert or any other person having as its object the recovery of the costs of execution on any property belonging to the Crown:

(3) The British Government waived its claim against Belgium for compensation for the seizure of the lighter, and undertook to give no support to claims in respect thereof which might be made by any third party, pointing out that the Belgian Govt. has taken no definite stand on the issue between Callbaert and the K.U.R. in which it comes in therefore but has merely undertaken "not to support" as against the British Government, the claim of its national directed towards the recovery of the costs he was led to incur in seizing the lighter which belonged to your organization (the K.U.R.) - and stating that Callbaert can proceed with his original claim in form prescribed by international law.

(d) K.U.R.'s reply of 11.12.35 to Belgian C.G. stating that as Callbaert's claim of fr. 45,000 and another claim were entirely offset by the withdrawal of the claims of the Congo authorities, there is a misunderstanding, and he is referring the matter to the authorities who previously accepted it.

29.1.36 suggesting that representation



TRANSPORT

KENYA-UGANDA

NO. 113

OFFICE OF THE HIGH COMMISSIONER FOR TRANSPORT,
GOVERNMENT HOUSE,
NAIROBI,
KENYA.

21st December, 1935.

Sir,

I have the honour to refer to Sir P. Cunliffe-Lister's Transport despatch No.114 of the 18th October, 1933, and connected correspondence, regarding the claims of Monsieur Callebaut and others against this Administration, and to inform you that the Belgian Consul General of Nairobi has again reopened this case with the General Manager of this Administration. Copies of correspondence which has passed between the Belgian Consul General and the General Manager, explaining the position, are enclosed herewith as follows:-

- (a) copy of a letter dated the 15th August, 1935, and enclosure, from the Belgian Consul General to the General Manager of this Administration;
- (b) copy of the General Manager's reply, dated the 20th August, 1935;
- (c) copy of a further letter dated the 5th November, 1935, from the Belgian Consul General to the General Manager and
- (d) copy of the General Manager's reply, dated the 5th December, 1935.

2. From Sir P. Cunliffe-Lister's Transport despatch No.86 dated the 29th July, 1933, I had assumed that Monsieur Callebaut's claim against this Administration for 45,000 francs had been definitely cancelled and I do not understand why Monsieur Sharff of Stanleyville, the Legal Adviser of Monsieur Callebaut, has reopened the question.

3. It is requested that you will be so good as to ask

the/

THE RIGHT HONOURABLE

J. H. THOMAS, M.P.,

SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, S.W.1.

29/3029/33

copy to F. D. (2)
enclosed (10)

24/3029/33

the Secretary of State for Foreign Affairs to take such steps as may be necessary to induce Monsieur Callebaut to realise that his claims against this Administration have been finally cancelled and cannot be revived.

I have the honour to be,

Sir,

Your most obedient, humble servant,

C. G. L. L. L.

for HIGH COMMISSIONER.

462/74.2.

BELGIAN CONSULATE GENERAL.

NAIROBI. 15th August, 1935.

Dear Sir,

In pursuance to our conversation of yesterday, I have the honour to inform you that I have received a letter from Mr. Sharff of Stanleyville, legal adviser of Mr. Henri Callebaut, resident of Bogoro, in the District of Ituri, Belgian Congo.

In that letter Mr. Sharff states that his client has obtained against the K.U.R. a judgment given by the Tribunal of 1st instance at Buta, on the 6th of November, 1929, duly signified on the 11th of October, 1930.

This decision - in the eyes of Belgian Law - has become unassailable. Moreover, he points out that all legal prescription and especially those of the Anglo-Belge Convention of signification of legal documents have been respected.

This judgment condemned the K.U.R. to pay Mr. Callebaut:

1. the amount of Shs.1.051/44 in repayment of material lost during the course of its transportation: this sum has been paid by your company.
2. a sum of Frs.45.000 as damages and interest for loss sustained and the judicial interests at 6% per annum from the date of the summons.

The amounts mentioned in the 2. have as yet not been settled, in spite of all steps taken in the matter.

A barge was seized on Lake Albert, moored in the port of Kinyasi. The British Government intervened and demanded the release of the procedure, claiming that the barge belonged to them. Pursuant to this declaration, the Public Court Prosecutor granted a stay of execution of the seizure of the barge.

In January 1933, after new efforts, your company was informed that proceedings would be renewed, unless a amicable arrangement was forthcoming. On 21st January 1933 your organism telegraphed to Mr. Sharff that discussions were taking place between the Belgian and British Governments. This telegram was followed by a letter from you, in which you asked him to await the results of the diplomatic arrangements, which would decide the issue. Since then nothing further has been heard and once more Mr. Sharff finds that he will be obliged to execute the judgment or to employ other methods in obtaining satisfaction for his client.

I enclose herewith a statement of Mr. Sharff giving the amount due to Mr. Henri Callebaut up to the 31st of May.

What other methods

I should be very much obliged to you if you could take the matter into consideration in order to reach a definite settlement.

Yours faithfully,

(signed)

P. LAMOTTE

Belgian Consul General

NOTE

Le Kenya & Uganda Railways s'est exécuté en ce qui concerne le poste 2° du commandement annexé (frs.9.305,25). Il reste en conséquence à payer:-

frs.	45.000	pour dommages et intérêts
"	2.172,20	le droit proportionnel de 4%
"	835	½ des dépens de l'instance
"	150	le coût de l'expédition et de sa copie
"	30	le coût de l'exploit de signification
<hr/>		
"	48.197,20	en principal et frais
"	20.400	les intérêts à 8% l'an sur frs.45.000 depuis le 1.10.1922 jusqu'au 31.5.1935.
<hr/>		
"	68.597,20	plus les intérêts ultérieurs au 31.5.1935.
<hr/> <hr/>		

à payer
à l'Etat
à l'indépendance

Copy

20th August, 1935.

A.12/63 V.II.

Monsieur P. Lamotte,
Belgian Consul General,
Nairobi.

Dear Sir,

With reference to your letter No.462/74.2 of the 15th instant, I regret very much that Monsieur Callebaut, through his Advocate, Monsieur Sharff, has considered it necessary to take further action in connection with his claim against this Administration as I was informed that both the English and the Belgian Governments had decided to cancel mutually all claims and counter-claims.

In support of this statement, I enclose, for your personal information, extracts from official correspondence between His Excellency Monsieur P. Hymans, Minister for Foreign Affairs, Belgium, and the British Ambassador to Belgium.

In these circumstances, I shall be glad if you will take what steps you may consider necessary to prevent as far as you are able, any further action in the matter being taken by Monsieur Callebaut or Monsieur Sharff.

Yours faithfully,

(signed) G. D. RHODES

GENERAL MANAGER.

CONSULAT GENERAL DE BELGIQUE

Nairobi,
le 26 Novembre, 1935.

Dossier: 776/74

Monsieur le Directeur General,

Comme suite a votre lettre du 20 aout dernier, No.A.12/63 V.II et a notre conversation de fin octobre, j'ai l'honneur de vous faire connaître que les points sur lesquels le Gouvernement belge a marqué son accord au Gouvernement britannique ou sur lesquels il a pris des engagements sont exclusivement les suivants: 1^o) les autorités belges n'ont a prêter d'aucune manière leur assistance a ceux qui voudraient poursuivre sur des biens qui sont la propriété de l'Etat britannique l'exécution des décisions judiciaires qui auraient éventuellement été prises en leur faveur. 2^o) le Gouvernement belge n'accordera pas son appui aux demandes, notamment de M. Callebaut, tendant a obtenir remboursement des frais de procédure de saisie des biens appartenant a la Couronne. 3^o) le Gouvernement britannique renonce a réclamer a la Belgique une indemnité du chef de la saisie de l'allège et il s'engage a ne pas appuyer les réclamations qui pourraient être formulées a cet égard par des tiers.

Aussi, le Gouvernement belge n'a nullement pris position sur le fond du litige qui s'est élevé entre M. Callebaut et votre organisme. Il a laissé intacts, il n'aurait d'ailleurs pu y toucher, les droits de M. Callebaut vis-a-vis des K.U.R. & H. Et s'est simplement engagé a ne pas appuyer auprès du Gouvernement britannique la réclamation de son ressortissant tendant a obtenir le remboursement des frais qu'il a été amené a engager pour faire saisir la barge qui appartenait a votre organisme.

L'accord intervenu n'empêche donc pas M. Callebaut de présenter la réclamation formée originellement contre les K.U.R. & H. pourvu que cette réclamation soit introduite dans des formes prescrites par le droit international.

Il appartient donc a mon compatriote de décider par quelle voie régulière il introduira une nouvelle action.

Veuillez agréer, Monsieur le Directeur General, l'assurance de ma considération très distinguée.

Le Consul General de Belgique

(sgd.)

P. LAMOTTE

Copy

5th December, 1935.

Ref. A.12/63/II.

Monsieur P. Lamotte,
Belgian Consul General,
Nairobi.

Dear Sir,

I am in receipt of your letter No.776/74 of the 26th instant, regarding the claim of M. Callebaut.

According to the advice received by the High Commissioner in 1933, M. Callebaut's claim against this Administration for 45,000 francs was one of two claims which were entirely offset by the withdrawal of the claims of this Administration and of the Shell Company against the Belgian Congo authorities.

In the circumstances, I am at a loss to understand the suggestion contained in the last paragraph of your letter that it is still competent for M. Callebaut to revive his claim against this Administration.

I think perhaps you will agree that there is some misunderstanding in regard to the matter, and, with the object of removing this, I am asking the High Commissioner to refer the matter to the authorities by whom the settlement referred to in the second paragraph hereof was reached.

Yours faithfully,

(signed) G. D. RHODES

GENERAL MANAGER.